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June 9, 2006

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VIA FEDERAL EXPRESS

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E St., NW
Washington, DC 20463

Re. MUR 5732 (Richard Bready)

Dear Mr. Jordan:

This letter is submitted on behalf of Richard L. Bready in response to the Complaint filed in the above-referenced MUR. The Commission should find no reason to believe that Mr. Bready has violated any provision of the Federal Election Campaign Act ("FECA").

Mr. Bready is referred to in the Complaint in connection with contributions he made to the Democratic Party of Hawaii, the Maine Democratic State Committee, and the Massachusetts Democratic State Committee (collectively, "the state parties"). Complainants allege that there exists reason to believe that Matt Brown for US Senate ("the Brown campaign") steered donors, including Mr. Bready, to contribute to the state parties with the explicit or implicit agreement that the parties would in turn contribute to the Brown campaign. Complainants allege that these activities constituted impermissible earmarking and evasion of federal individual contribution limits.

As set forth below, Mr. Bready's contributions to the state parties were not earmarked for the Brown campaign. Mr. Bready had no communications with any officials from any of the state parties to which he contributed, and his contributions bore no instructions, encumbrances, or designations as to their use. Mr. Bready had no understanding with the Brown campaign or any of the state parties regarding the intended use of his specific contributions.

Accordingly, the Commission should find no reason to believe that Mr. Bready violated any provision of FECA in connection with his contributions to the state parties.

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OFFICE OF LEGAL
COUNSEL

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1. Mr. Bredy's Contributions Were Not Earmarked For The Brown Campaign.

Mr. Bredy's contributions to the state parties were not earmarked for the Brown campaign. FECA regulations define "earmarked" as:

...a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate.

11 C.F.R. § 110.6(b)(1).

Mr. Bredy placed no designations, encumbrances, or instructions upon his contributions to the state parties. (See Affidavit of Richard Bredy, attached as Exhibit A, at ¶ 2). The memo line on each check is blank. (See copies of checks, attached as Exhibit B). Nor did Mr. Bredy instruct any officers or agents of any of the state parties to contribute to the Brown committee. (Bredy Affidavit at ¶ 3). Mr. Bredy had no contact whatsoever with any officer of the state parties in connection with his contributions. (Bredy Affidavit at ¶ 3).

Under FECA, "a contribution subject to . . . earmarking rules must *in fact* be earmarked by the person making the contribution." *MUR 4831 (Nixon Campaign Fund), Statement of Reasons, Vice Chairman Bradley A. Smith and Commissioner Michael E. Toner dated December 1, 2003*, at 3 (emphasis in original). It is an "improper extension of [11 C.F.R. § 110.6], and of the Act" to impute earmarking when no evidence exists to support such a finding. *Id.* There is no evidence to support a finding of any earmarking by Mr. Bredy in this matter, and no such earmarking occurred.

2. Mr. Bredy's Contributions To The State Parties Are Expressly Permitted By Commission Regulations.

Commission regulations expressly allow the type of contribution Mr. Bredy made to the state parties. 11 C.F.R. § 110.1(h) explicitly permits a donor to contribute to a state committee supporting the same candidate, so long as (1) the contributor does not give with the knowledge that a substantial portion of his contribution will be contributed to that candidate in the same election, and (2) the contributor does not retain control over the funds. Mr. Bredy's state party contributions satisfy 11 C.F.R. § 110.1(h).

Mr. Bredy had no understanding with the Brown campaign or with any of the state parties regarding the use of his specific contributions. (Bredy Affidavit at ¶ 4). "Section 110.1(h)(2) only provides for aggregation of a contributor's contributions where the contributor has knowledge of the committee's plans." *MUR 5445 (Nesbitt), First General Counsel's Report* at 9. Mr. Bredy had no such knowledge. Moreover, even being "likely aware" that a

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committee will “contemporaneously contribute” to a candidate does not violate 11 C.F.R. 110.1(h)(2), if a contributor does not know that a portion of *their own* contribution will be given to a specified candidate. *MUR 5019 (Keystone), First General Counsel’s Report* at 27.

Mr. Bready retained no control over the funds he contributed to the state parties. (Bready Affidavit at ¶ 3). His contribution checks bore no instructions or encumbrances, and the state parties to which he donated had complete control over the funds in question. Mr. Bready never had any contact with officers or agents of any of the three state parties to which he contributed. (Bready Affidavit at ¶ 3). There is no evidence whatsoever indicating that Mr. Bready exercised any control as defined by 11 C.F.R. § 110.1(h)(2), and in fact he exercised no such control.

3. Complainants Have Submitted No Evidence Indicating That Mr. Bready Violated FECA.

Dismissal of a complaint to the FEC is appropriate where the complaint “consists of factual allegations that are refuted by sufficiently compelling evidence produced in response to the complaint.” *MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas dated December 21, 2000*, at 2. “Unwarranted legal conclusions from asserted facts” or “mere speculation” are not accepted as true. *Id*

Complainants have put forth no evidence that Mr. Bready engaged in any impermissible earmarking or directing of his contributions. The Commission can only find “reason to believe” if the complaint sets forth “specific facts, which, if proven true, would constitute a violation of FECA.” *Id.* at 1. Complainants have submitted no such facts. Indeed, they themselves state that their allegations are based solely upon “recent newspaper articles and recent information and belief.” Complaint at 1.¹ Conversely, Mr. Bready has submitted a sworn affidavit and copies of the contribution checks at issue, which conclusively refute the allegations made in the Complaint. Accordingly, the Complaint against Mr. Bready should be dismissed.

¹ Notably, not even these newspaper articles suggest facts from which it could be concluded that Mr. Bready engaged in earmarking, had any contact with the state parties, maintained any control over his contributions once he had made them or had any knowledge that his own contributions would be given to the Brown campaign

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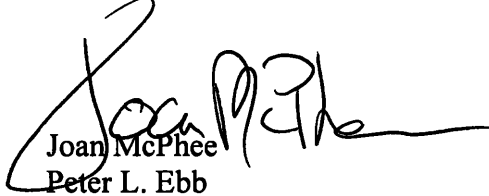
Jeff S. Jordan

June 9, 2006

CONCLUSION

For the reasons set forth above, the Commission should find no reason to believe that Mr. Bready violated any provision of FECA. Counsel respectfully requests that this matter be closed.

Sincerely,


Joan McPhee
Peter L. Ebb

Enclosures

cc: Mr. Richard L. Bready
Douglass N. Ellis, Jr.
Matthew J. Merritt

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EXHIBIT A

BEFORE THE FEDERAL ELECTION COMMISSION

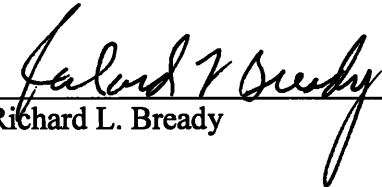
Matt Brown for US Senate *et al.*

MUR 5732


AFFIDAVIT OF RICHARD L. BREADY

I, Richard L. Bready, hereby swear that the following information is based on my personal knowledge, that I am competent to testify, and that it is both true and correct:

1. Attached hereto are true and correct copies of the contribution checks I wrote to the Democratic Party of Hawaii, the Maine Democratic State Committee, and the Massachusetts Democratic State Committee (collectively, "the state parties").
2. I placed no designation, encumbrance, or instructions upon my contributions to the state parties.
3. I maintained no control over my contributions after I made them to the state parties. I did not instruct any officer or agent of any of the state parties to contribute to the Brown campaign. I had no contact whatsoever with any officer or agent of any of the state parties in connection with my contributions.
4. I had no understanding with the Brown campaign or any of the state parties regarding the intended use of my specific contribution.


Richard L. Bready

Signed and sworn before me this 8th day of June, 2006.



NOTARY PUBLIC

My commission expires: 11/19/09

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EXHIBIT B

Amount: \$6,000.00
Account:
Bank Number:

Sequence Number:
Capture Date: 01/11/2006
Check Number: 8787

*0111004818
01/11/2006
6336666535

This is a LEGAL COPY of
your check. You can use it
the same way you would
use the original check.

9002/01/10 01/10/2006
0662941100
E510101213

RICHARD L. BREADY
SPECIAL ACCOUNT

08-02

8787

52-1175 00
10 102

22, to Hawaii Democratic Party \$ 6000.00
for for the 2006 01/11/06 P1903 2152 P16 C
Bank of America

Bank of America

ACH ATX 11/10/06

Richard L. Bready

27044170236

First Hawaiian
Honolulu Hawaii

01/10/2006
462730

BANK OF AMERICA NA MAL
E0621 01 P03
01/11/06

Democratic Party of Hawaii
1314 S. King Street #9-4
Honolulu, HI 96816
Federal Account
01/10/06

Do not endorse or write below this line.

Amount: \$6,000.00
Account:
Bank Number:

Sequence Number:
Capture Date: 01/12/2006
Check Number: 8788

RICHARD L BREADY 06-82
SPECIAL ACCOUNT

8788

67-1/115 RU
10162

Date 1/4/06

Pay to the Order of Maine Democratic Party \$ 6,000 ⁰⁰/₁₀₀
Six thousand and 00/100 ————— Dollars

Bank of America

ACH R/T 011500010

Memo _____

(True Private Bank)

Richard L Bready

>> TD BANKNORTH
HAVERHILL MA 01835

BANK OF AMERICA, NA NA
01 P03
01/12/06

FOR DEPOSIT ONLY
MAINE VICTORY 2006
NON FEDERAL
ACCT #
020103700

27044170237

Amount: \$5,000.00
Account:
Bank Number:

Sequence Number:
Capture Date: 01/06/2006
Check Number: 8789

RICHARD L. BREADY 08-82
SPECIAL ACCOUNT

8789

67-1115 RI
10162

Date 1/4/06

Pay to Massachusetts Democratic Party \$ 5,000⁰⁰/₁₀₀
the Order Five thousand and 00/100 Dollars

Bank of America

ACH R/T 011500010

Memo _____

The Private Bank

Federal Reserve Bank

EASTERN BANK

FOR DEPOSIT ONLY
MASSACHUSETTS DEMOCRATIC
STATE COMMITTEE
FEDERAL FUNDS ACCOUNT
ACCT.

BANK OF AMERICA NA HS
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01/06/06

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